

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: DIET DRUGS  
(PHENTERMINE, FENFLURAMINE,  
DEXFENFLURAMINE) PRODUCTS  
LIABILITY LITIGATION**

MDL DOCKET NO. 1203

**MDL CASE NO.**  
**02-20136**

**THIS DOCUMENT RELATES TO:**

**ROSALIE BERGERON, ET AL.  
(KATHERINE SMITH)**

## VERSUS

**AMERICAN HOME PRODUCTS  
CORPORATION, ET AL.**

## JUDGE BARTLE

**MOTION TO WITHDRAW AS COUNSEL OF RECORD**

COMES NOW, Robert G. Harvey, Sr., A.P.L.C., Jacobs & Sarraf, A.P.L.C., and O'Quinn, Laminack & Pirtle, who respectfully files this, their Motion to Withdraw as Counsel of Record, as to Plaintiff Katherine Smith and in support of said Motion, would show this Honorable Court as follows:

1. Robert G. Harvey, Sr., A.P.L.C., Jacobs & Sarraf, A.P.L.C., and O'Quinn, Laminack & Pirtle, were hired by Plaintiff Shawnell Livas to pursue her claims against Defendant Wyeth for injuries she sustained as a result of her ingestion of the prescription diet drugs phentermine, fenfluramine and/or dexfenfluramine.

2. Per Plaintiff's instructions, Robert G. Harvey, Sr., A.P.L.C., Jacobs & Sarrat, A.P.L.C., and O'Quinn, Laminack & Pirtle, opted her out of the Nationwide Settlement Agreement and filed an individual lawsuit on her behalf in Louisiana state

court. That lawsuit was later removed to the United States District Court for the Eastern District of Louisiana and subsequently transferred to this Court for inclusion in MDL No. 1203.

3. On December 29, 2003, a letter was forwarded to Plaintiff's home address explaining that her case was subject to dismissal. The letter was sent certified mail; return receipt requested and was signed for at Plaintiff's home address on January 2, 2004.

4. On January 12, 2004, Plaintiff instructed the lawyers of Robert G. Harvey, Sr., A.P.L.C., Jacobs & Sarrat, A.P.L.C., and O'Quinn, Laminack & Pirtle to withdraw as counsel of record and insisted that she was retaining new counsel.

5. Plaintiff requested a copy of her file, which was immediately forwarded to her home address via Federal Express delivery.

6. Plaintiff has since failed to identify newly retained counsel, if any, and has failed to communicate with the offices of Robert G. Harvey, Sr., A.P.L.C., Jacobs & Sarrat, A.P.L.C., and O'Quinn, Laminack & Pirtle.

7. Pursuant to Plaintiff's instruction, Plaintiff's counsel believe that they are entitled to be released from this matter without further delay.

FOR THESE REASONS, Robert G. Harvey, Sr., A.P.L.C., Jacobs & Sarrat, A.P.L.C., and O'Quinn, Laminack & Pirtle, request that this Court grant their Motion to Withdraw as Counsel of Record and grant such other and further relief as it deems necessary.

**Respectfully submitted,**

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded to all known counsel of record, pursuant to the Federal Rules of Civil

Procedure on this 16th day of Dec., 2004.

Rebecca M. Urrutia

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**PRETRIAL ORDER NO.** \_\_\_\_\_

AND NOW, TO WIT, this \_\_\_\_ day of \_\_\_\_\_, 2004, upon consideration of the motion of the law firms of Robert G. Harvey, Sr., A.P.L.C., Jacobs & Sarrat, A.P.L.C., and O'Quinn, Laminack & Pirtle, to withdraw as counsel for Plaintiff Katherine Smith in the above captioned action,

IT IS ORDERED that withdrawal of Robert G. Harvey, Sr., A.P.L.C., Jacobs & Sarrat, A.P.L.C., and O'Quinn, Laminack & Pirtle, as counsel is permitted, subject to the following conditions:

1. Plaintiff's counsel shall send a letter to the plaintiff by certified mail that will include the following:

- (a) a copy of this Order;
  - (b) a statement outlining to Plaintiff the importance of her proceeding on this case with counsel familiar with the law and the procedure in the federal court of cases similar to this case;
  - (c) Plaintiff's counsel's letter shall also provide that Plaintiff shall have thirty (30) days from the date of this Order to secure new counsel if she intends to proceed with counsel in this manner;
  - (d) Plaintiff's counsel's letter shall also state that the court intends to grant present Plaintiff's counsel's motion to withdraw at the expiration of the thirty (30) day period, and the case shall proceed on its normal trial schedule whether or not plaintiff has secured new counsel;
2. Plaintiff's counsel shall file with the Clerk of Court within ten (10) days of the date of this Order a certificate that both evidences that Plaintiff's counsel has complied with all of the foregoing requirements of this Order and states the plaintiff's last known address.
3. Thirty (30) days from the date of this Order, provided all of the foregoing steps have been completed by Plaintiff's counsel, Plaintiff's counsel shall be deemed to be released from further responsibility to the court as counsel for Plaintiff in this civil action.

SO ORDERED.

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HON. HARVEY BARTLE, III